

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12 IN THE UNITED STATES DISTRICT COURT  
13 FOR THE DISTRICT OF OREGON  
14

15 JULIE D. BYERS,  
16 Plaintiff,

O R D E R  
Civ. No. 10-394-AA

17 vs.

18 FIRST TRANSIT, INC., a foreign  
19 corporation,

20 Defendants.

21 

---

AIKEN, Chief Judge:

22 Defendant filed a motion to dismiss on April 19, 2010  
23 alleging lack of subject matter jurisdiction. Plaintiff,  
24 represented by counsel, requested additional time to respond to  
25 the motion. The court granted plaintiff's motion and plaintiff's  
26 opposition was due May 10, 2010. To date, nearly two months  
27 later, plaintiff has failed to file any opposition or response to  
28 defendant's motion. The court will therefore consider

1 defendant's motion unopposed.

2 Pursuant to Fed. R. Civ. P. 12(b)(1), defendant's motion is  
3 granted. Plaintiff brings a single wrongful discharge claim  
4 based upon the allegation that she was terminated due to her  
5 involvement in "union organizational activities." Complaint,  
6 para. 5. Plaintiff's wrongful discharge claim is preempted by  
7 the National Labor Relations Act, 28 U.S.C. §§ 157,158. See  
8 also, Brands v. First Transit, Inc., 278 Fed. Appx. 722, 724 (9<sup>th</sup>  
9 Cir. 2008).

10 Defendant's motion to dismiss (doc. 5) is granted and  
11 defendant's request for attorney fees is denied.

12 IT IS SO ORDERED.

13 Dated this 6 day of July 2010.

14  
15  
16  
17 /s/ Ann Aiken  
18 Ann Aiken  
19 United States District Judge  
20  
21  
22  
23  
24  
25  
26  
27  
28